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/Shaheda Abdin/  
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HENRY T. BRENDZEL**

	<b>Date:</b> March 03, 2009
<b>To:</b> Examiner: Shaheda A. Abdin	<b>From:</b> Henry T. Brendzel, Esq
<b>Fax:</b> 571-273-8300	<b>Fax:</b> (973) 467-6589
<b>Phone:</b> 571-270-1673	<b>Phone:</b> (973) 467-2025
<b>Re:</b> Serial No: 10/798,696	<b>Pages:</b> Cover + 9

Henry Brendzel

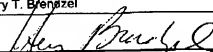
<b>TRANSMITTAL FORM</b> <i>(to be used for all correspondence after initial filing)</i>		Complete if Known	
		Application Number	10/798,696
		Filing Date	3/11/2004
		First Named Inventor	Thomas Afferton
		Examiner Name	Shaheda A. Abdin
		Group/Art Unit	2629
Total number of pages in this Submission: this page, plus <b>8</b>		Attorney Docket ID	Afferton 2003-0075

If Fee Form is not included, but a fee is due, the Commissioner is Authorized to charge Deposit Account of Henry T. Brendzel No 600732 of, and consider that appropriate requests that give rise to the fees (such as for an extension of time) have been made.

## ENCLOSURES (check all that apply)

<input type="checkbox"/> Fee Form <input type="checkbox"/> Check included  <input checked="" type="checkbox"/> <b>SUBSTITUTE</b> Amendment/Response <input type="checkbox"/> After Final  <input type="checkbox"/> Affidavit(s)/Declaration(s)  <input type="checkbox"/> Extension of Time Request  <input type="checkbox"/> Information Disclosure Statement  <input type="checkbox"/> Certified Copy of Priority document(s)  <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.2 or 1.53	<input type="checkbox"/> Declaration (no Missing Parts Notice)  <input type="checkbox"/> Assignment Papers (for an Application)  <input type="checkbox"/> Drawing(s)  <input type="checkbox"/> Licensing-related Papers  <input type="checkbox"/> Petition  <input type="checkbox"/> To Convert a Provisional Application  <input type="checkbox"/> Power of Attorney, Revocation or Change of Correspondence Address  <input type="checkbox"/> Express Abandonment  <input type="checkbox"/> Terminal Disclaimer  <input type="checkbox"/> To Convert to Statutory Invention Registration	<input type="checkbox"/> Postcard(s)  <input type="checkbox"/> Small Entity Statement  <input type="checkbox"/> Request for a Refund  <input type="checkbox"/> After Allowance Communication to group  <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences  <input type="checkbox"/> Appeal Communications to Group (Appeal Notice, Brief, Reply Brief)  <input type="checkbox"/> Proprietary Information  <input type="checkbox"/> Status Letter  <input type="checkbox"/> Other
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## SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual Name	Henry T. Brendzel	
Signature		Date 3/3/09

## CERTIFICATE OF MAILING/FACSIMILE TRANSMISSION

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IN THE UNITED STATES  
PATENT AND TRADEMARK OFFICE**RECEIVED**  
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**MAR 03 2009****Patent Application**

Inventor(s)	Thomas Afferton Kenneth Duell Simon Zelingher Hossein Eslambolchi Martin Birk Kathleen A. Tse	Serial No.	10/798,696
		Filing Date	3/11/2004
		Examiner	Shaheda A. Abdin
Case Name	Afferton 2003-0075	Art Unit	2629
Title	Network with Optical Bandwidth on Demand		

COMMISSIONER FOR PATENTS  
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SIR:

SUBSTITUTE AMENDMENT  
REMARKS

This is in response to an Office action dated November 12, 2008.

This substitute amendment is presented because the amendment filed on 2/27/09 inadvertently included the claims from the previous amendment.

Claims 21-25 and 46-47 were rejected under 35 USC 112, second paragraph. Applicants respectfully traverse.

A telephonic interview was held with the Examiner on 2/12/2009. The Examiner explained that she could not clearly understand the claims and could not clearly establish correspondences between the claim language and the drawings (to assist her in understanding the claims). Applicants' representative explained that the rejection – by virtue of the Examiner citing MPEP 2173.05(d) – appeared to focus on a purported use of an example in the claims, and that the claims contained no examples. The Examiner did not quite admit that the citing of MPEP 2173.05(d) was not appropriate.

Because the interview left the issue of MPEP 2173.05(d) unresolved, the following formally responds to the rejection as it is formulated.

In connection with claim 21, the Examiner asserts that the term “a first optical director” renders the claim indefinite because it is unclear whether the limitation(s)